



## What Tennesseans Need to Know About Living Will and Durable Power of Attorney for Health Care



Tennessee law gives you the right to turn down medical treatment. For example, you may not want to be put on machines if you are dying.

But, what if you get too sick to decide or speak for yourself? Two legal papers can speak for you. A Living Will says what you would want if you were dying or in a long-time coma. A Durable Power of Attorney for

Health Care names someone to make medical decisions if you can't. If you want a Living Will, it's good to get both papers.

You can only sign these papers while you are still well enough to make decisions.

This page tells the most important things to know about these papers. The rest of the pages give you more details.

### Living Will

A Living Will is a legal paper. It says you want your death to be a natural death. You don't want anything that would only make your dying take longer. It says not to keep you alive on machines if:

You are about to die, **or**

The doctor thinks you will never wake up from a coma.

A Living Will also says if you want to be kept alive by a feeding tube or not. But, Living Wills signed before July 1, 1991 don't talk about being in a coma or being fed by tubes.

A Living Will does not say who should get your belongings after you die.

A Living Will works only if others know you have it. If you sign one, give copies to your family, doctor and friends. A copy is as good as an original. You might also want to cut out and carry the attached "wallet card."

You can cancel a Living Will later. Just tell people you changed your mind. You don't have to tear up the paper, but you should.

It's good to have someone you trust make sure your Living Will is carried out. A Durable Power of Attorney for Health Care gives them the legal power to do this.

### Durable Power of Attorney for Health Care

This legal paper says who should make your health care decisions if you can't speak for yourself. This person can stop treatment you would not want. This person is called your "attorney in fact" but they don't have to be a lawyer. Your attorney in fact is just someone you trust to carry out your wishes.

You can cancel a Durable Power of Attorney for Health Care at any time. Just tell your doctor or other health professional that you changed your mind.

**NOTE:** There are other kinds of Durable Powers of Attorney. If you signed a Power of Attorney to let someone handle your money and property, that person can **NOT** make your medical decisions. For that, you must sign a Durable Power of Attorney for Health Care.

**NOTE:** Do you want to say what **mental health** treatment you should get if you become too sick to decide? The papers in this set do not do this in detail. You may want to sign a "Declaration for Mental Health Treatment." For a free copy of this "Declaration for Mental Health Treatment," call **1-800-560-5767**.

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## QUESTIONS AND ANSWERS

### about Living Will and Durable Power of Attorney for Health Care

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#### Do I have to have both papers?

No. But, if you make a Living Will, it is best to have both. The Durable Power of Attorney for Health Care makes your Living Will stronger. The person you name can make sure your Living Will is carried out. The Living Will makes sure that person knows your wishes.

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#### If I signed a Living Will or a Durable Power of Attorney for Health Care before July 1, 1991, should I do it again?

If these papers were legal when you signed them, they are still legal now.

But, Living Wills signed before July 1, 1991 **don't say what to do if:**

- ◆ You need tubes to give you food or water.
- ◆ The doctor thinks you will never come out of a coma.

If you want to decide this yourself, sign a new Living Will. You can also say if you want to donate organs after you die.

To be safe, it is best to sign a new Durable Power of Attorney for Health Care if:

- ◆ You still want one and
- ◆ You signed the old one before April 1990.

There is another reason to sign a new Durable Power of Attorney for Health Care. Do it if the person you named in the old one cannot or will not serve.

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#### When I make a Living Will, what choices do I have?

A Living Will says you don't want medical treatment that would make your dying take longer. You must also say in your Living Will:

- ◆ If you do or don't want to be kept alive by tubes for food or water.
- ◆ If you do or don't want to donate part of your body after you die.

#### What choices does the Living Will give me about donating organs?

You have three choices. Check just **ONE**:

- ◆ Give any part of your body after death for use by another person, **OR**
- ◆ Give part, but not all of your body (write in the parts you want to give), **OR**
- ◆ Give none of your body.

If you donate organs, your body stays on machines until the organs are taken out. You do not pay for this.

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#### How do I sign these papers so they will be legal?

To be legal, a Living Will must be signed in front of 2 witnesses. This is also true for a Durable Power of Attorney for Health Care. (See the next section. It says who the law does and does not allow to be a witness.)

A notary public **must** watch you sign your Durable Power of Attorney for Health Care. A Living Will does **not** have to be notarized.

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#### Who CANNOT witness the signing?

By law, certain people **CANNOT** sign as witnesses to your Living Will. They also **CAN'T** witness your Durable Power of Attorney for Health Care. They are:

- ◆ Your relatives.
- ◆ Anyone who will get your money or property when you die.
- ◆ The person you have chosen to be your "attorney in fact" in the Durable Power of Attorney for Health Care.
- ◆ Your health care providers, such as your doctors and anyone who works for your doctors.
- ◆ Anyone who works for a place where you are a patient, such as a hospital or nursing home.

### Can a relative be my “attorney in fact”?

Yes. What a relative **CANNOT** do is be the witness to your signing. But, a relative **CAN** be the “attorney in fact” you name to decide about your medical care.

### Who **CANNOT** be my “attorney in fact”?

By law, you **CANNOT** choose the people listed below to be the “attorney in fact” in your Durable Power of Attorney for Health Care:

- ◆ One of your health care providers, such as a doctor or nurse.
- ◆ Someone who works for one of your health care providers (unless this person is your relative).
- ◆ Anyone who runs a health care place, such as a hospital or nursing home.
- ◆ Anyone who works for a health care place (unless this person is your relative).
- ◆ Your conservator (except in special cases. Check with your lawyer on this).

### What should I do with my Living Will and Durable Power of Attorney for Health Care?

These papers work only if others know you signed them. Keep the original with your important papers. Give copies to your “attorney in fact,” your family, close friends and doctors. A copy will work as well as the original. Keep a copy in your wallet. Or, clip the attached “wallet card” to your insurance card.

### I signed a Living Will or a Durable Power of Attorney for Health Care in another state. Will those papers work in Tennessee?

Yes, **IF** you followed the laws of the state where you signed them. But check to see if your Living Will talks about:

- ◆ Keeping you alive by using tubes to give you food or water.
- ◆ Keeping you alive on machines if you are in a permanent coma.

What if it doesn’t? If you don’t want to be kept alive that way, sign a new Living Will.

### I want someone else to handle my money and business affairs. Will a Durable Power of Attorney for Health Care do that?

No. For that, you must sign a regular Durable Power of Attorney. A Durable Power of Attorney for Health Care only names someone to decide your medical care.

### If I am dying, I want them to do **EVERYTHING** they can to keep me alive. I want them to use any machines or other treatments they have. What should I do?

In that case, do **NOT** sign a Living Will. Tell your doctors, your family and your friends what you want. It may be a good idea to sign a special Durable Power of Attorney for Health Care. That way someone will see that your wishes are carried out. But, do **NOT** use the Durable Power of Attorney for Health Care form attached to this paper. It says you do not want to be kept alive on machines or tubes.

### This Is The Front Of Your **CLIP & CARRY WALLET CARD**

If you sign a Living Will, fill this out and keep it in your wallet. Write on the line at the bottom where you keep your Living Will.

#### Notice To Health Care Providers

See important information on both sides regarding the card holder's Living Will, Durable Power of Attorney for Health Care and organ donation.

I, \_\_\_\_\_  
(Name)

have signed a Living Will in conformity with T. C. A. §32-11-105.

**Here is where I keep my Living Will or a copy:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Instructions For Use Of Wallet Card

If you make a Living Will, fill out the card and carry it with you. This could be important if you are taken to an emergency room and you can't talk. It tells health care workers that you have a Living Will. It also tells them who to contact.

1. Write on the front where family and friends can find your Living Will or a copy.
2. Fill in the back of the card as shown below.
3. Fold the card across the middle so that the large box shows on the outside front.
4. Clip the card to your health insurance card or your Medicare card.

This is the back side of your wallet card.

Print your Name

**Notice To Health Care Providers:**  
The holder of this card:

has signed a Living Will and a Durable Power of Attorney for Health Care. In addition to the desire for a natural death, the Living Will says the cardholder: **Does not** ☐ **Does** ☐

**want to get food or water** through a vein or feeding tube.

He or she **Does** ☐ **Does not** ☐ **want to donate** part or all of the body for organ transplantation.

**ALL OF BODY** ☐ **OR** **Parts to Donate:**

The "Attorney In Fact" who can make medical care decisions when the card holder cannot speak for himself or herself is

**Name** \_\_\_\_\_

**Address** \_\_\_\_\_

**Phone (day)** \_\_\_\_\_ **(night)** \_\_\_\_\_

Want them to **Stop or Not Start** giving you food or water through a vein or feeding tube? Put a check mark after the first "**Does not.**"

Want to get food or water through a vein or feeding tube? Put a check mark after the first "**Does.**"

Want to give part or all of your body for use by someone else? Put a check mark after "**Does**".

If you do **NOT** want to donate any of your body, put a check mark here after "**Does Not**".

Do you want to give your whole body? Put a check after "All of Body".

If you want to give only certain parts, list them.

Print the name, address and phone of the person you named to make medical decisions if you can't.



# LIVING WILL



When I, \_\_\_\_\_, am dying, I may not be able to speak for myself.  
Name

I am signing this paper so my doctor and family will know what I want.

If I am going to die no matter what, I want to die naturally. I only want medical care that will stop pain and keep me comfortable. I do not want treatment that would only make my dying take longer. I direct the doctors to **not** give me (withhold) this kind of care. If this kind of care is already being given, I direct the doctors to stop (withdraw) it.

This living will is to be used when these 3 things are true:

- ◆ I am dying from a medical problem and
- ◆ My doctor believes there is no real hope I will get well and
- ◆ I will probably die from this medical problem no matter what treatment I get.

Also, if I cannot eat or drink by mouth, I am putting a ✓ by what I want:

- ☐ I **DO NOT** want to get food or water through a vein or feeding tube.
- ☐ I **DO WANT** to get food or water through a vein or feeding tube.

## Organ/Tissue Donor Certificate

I am putting a ✓ by what I also want when I die:

- ☐ Give my organs and/or tissues to be transplanted into someone else.
- ☐ Only give my \_\_\_\_\_

(Write in which organs and/or tissues you want to give someone else.)

After I die, I want to be on life support machines only long enough to take out the organs.

- ☐ **DO NOT** give my organs or tissues for a transplant.

When I am dying, I might be too sick to say what I want. I want my doctor and family to do what I am saying in this Living Will. I understand what may happen.

The words I am using in this Living Will mean the same thing as they mean in the Tennessee Right to Natural Death Act, T.C.A. 32-11-103.

I understand what this Living Will says. I am in my right mind. I know what I am doing when I sign this Living Will.

I am signing this paper on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Date) (Month) (Year)

X \_\_\_\_\_  
(Declarant – Your signature)

## Witnesses Statement

We know the person who signed this paper and asked us to be witnesses. This person is an adult. This person signed the paper in front of us. We believe no one forced this person to sign or talked them into it. We believe this person is in their right mind and knows what they are signing. This person understands what will happen because they signed this paper. We are not related to this person by blood or marriage or adoption. We will not get any of their estate when they die. We are not the attending doctors. We do not work for the doctor or a health facility where the person signing this paper is a patient. We do not now have a claim against any of this person's estate when they die. We are not this person's "attorney in fact."

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

**NOTE: A Living Will must be witnessed, but does not have to be notarized. The Attorney General for the State of Tennessee said so on February 9, 1998 (opinion 98-032). Do you want to have your Living Will notarized anyway? Then here is a form you can use:**

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_,  
the declarant, and subscribed and sworn to before me by \_\_\_\_\_  
and \_\_\_\_\_ (witnesses) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
(Date) (Month) (Year)

\_\_\_\_\_  
(Notary Public)

My Commission Expires:\_\_\_\_\_.





# DURABLE POWER OF ATTORNEY FOR HEALTH CARE



This paper says who I want to make health care decisions for me. I want them to do this only if I am too sick to decide for myself. I want them to try to make the same decisions that I would make if I could.

I want this person to have all the legal rights to OK, refuse or stop medical care for me for a physical or mental condition. If I need it for mental illness or serious emotional disturbance, I want them to hospitalize me.

I want this person to have all the rights I have under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This person can get copies of all my medical information.

## I want this person to have my durable power of attorney.

I want them to have the power to do the things listed above:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Day time phone: \_\_\_\_\_

Night time phone: \_\_\_\_\_

## Backup attorney in fact:

If the person named above cannot or will not serve, I want the following person as my backup attorney in fact. I want them to have full powers and responsibilities to make health care decisions for me.

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Day time phone: \_\_\_\_\_

Night time phone: \_\_\_\_\_

I give my OK to use copies of this legal paper. I am signing this Durable Power of Attorney for Health Care on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My signature: X \_\_\_\_\_

Person giving the Durable Power of Attorney for Health Care (Principal)

**Do you have a Living Will? If NO, stop here.**

## Read this if you have a Living Will. Fill out the part below:

### Does my doctor think I will die no matter what they do?

Then I want this person to make sure my Living Will is followed. I want them to make sure that I die naturally. This means:

- Not dragging out my dying with machines or treatment that won't help.
- Giving me only what I need to be comfortable and out of pain.

### Does my doctor think I will die no matter what they do? Then this is what else I want.

I may not be able to eat or drink. In that case: I **DO** \_\_\_\_ or **DO NOT** \_\_\_\_ give this person the right to say no to or to stop having me fed through a tube or a vein.

When I am dying, I want treatment and medicine to keep me comfortable and out of pain. In that case:

I **DO** \_\_\_\_ or **DO NOT** \_\_\_\_ give this person the right to OK **any** treatment or medicine to do that.

I want this treatment and medicine even if it could hurry my death. I want it even if it could cause addiction. I want it even if it could cause permanent physical damage.

My signature: X \_\_\_\_\_

Date: \_\_\_\_\_

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## Witnesses Statement

By signing this paper, each witness is saying that : "I know the person who signed this paper and asked me to be a witness. This person is an adult. This person signed the paper in front of me. I believe this person is in their right mind and knows what they are signing. I believe no one forced this person to sign the paper. I believe no one talked this person into signing this paper. This person understands what will happen because they signed this paper. I am not related to this person by blood, marriage or adoption. I will not get any of their estate when they die. I am not the person this paper makes the attorney in fact. I am not the attending doctors. I do not work for the doctor or a health facility where the person signing this paper is a patient. I do not now have a claim against any of this person's estate when they die."

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Witness

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF TENNESSEE

COUNTY OF \_\_\_\_\_

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the principal, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

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### - WARNING -

This is an important legal document. Before executing this document you should know these important facts:

This document gives the person you designate as your agent (your attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose or treat a physical or mental condition. This power is subject to any limitations that you include in this

document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent: (1) authorizes anything that is illegal; or (2) acts contrary to your desires as stated in this document.

You have the right to revoke the authority of your agent by notifying your agent or your treating physician, hospital or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to: (1) authorize an autopsy; (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes; and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask an attorney to explain it to you.

[Tennessee Code Annotated, § 34-6-205; Durable Power of Attorney for Health Care]